IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.317 OF 2019

Avinash Prakash Jadhav & Anr. .... Applicants
versus
The State of Maharashtra .... Respondent

WITH
CRIMINAL APPLICATION NO.597 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.317 OF 2019

Hanumant Khandu Gheware & Ors. .... Interveners

IN THE MATTER BETWEEN

Avinash Prakash Jadhav & Anr. .... Applicants
versus
The State of Maharashtra .... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1302 OF 2019

Pravin Ramchandra Chavan & Anr. .... Applicants
versus
The State of Maharashtra .... Respondent

…....

- Mr. Sachin Pawar, Advocate for Applicants in ABA No.317/19 & ABA No.1302/19
- Mr. Satish S. Raut, Advocate for Intervener in APPP 597/19.
- Ms. S. S. Kaushik, APP for the State/Respondent.
- API Mr.Nanaware H.M., Sinhagad Road Police Station, Pune, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 01st AUGUST, 2019

P.C. :

1. Both these applications are decided by this common order because they arise out of the same offence.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.84/18 registered with Sinhagad Police Station, Pune, under sections 420 r/w 34 of the Indian Penal Code and under sections 4, 5 and 6 of Prize Chit and Money Circulation Schemes (Banning) Act, 1978.

3. The FIR is lodged by one Hanumant Khandu Gheware. The informant had studied upto 10th standard and had done a course in ITI. He was unemployed. He was in search of job. His friend Sanket Kulwade gave him information that one company was conducting workshops for their promotion and was giving jobs. The first informant was lured into attending the programme. At the instance of his friend Kulwade, the first

informant received a call from M/s Skyrunway Pvt. Ltd. The caller informed him that the informant was selected for training. On 28/12/2017 he went to the company. He came to know that the present Applicants others were the Directors of that company. He was told that he had to pay Rs.2,000/- for the training programme and for the purpose of residing during the training course and for his meals. He was taken to a building where other 4 to 5 people had also gathered for the training purpose. The first informant paid Rs.2,000/- to the company, but he was not given any receipt. Their training started from 28/12/2017. At that time, the three directors namely Avinash Jadhav, Abhijit Sutar and Pravin Chavan were giving them information in phases. The person who had given their reference, was standing behind them. Suddenly, the said Directors informed the trainers who were present, that the training was not given for any job, but for conducting a business. The business was described as “Direct selling through multilevel marketing”. The informant was told that they need not invest any amount and yet they could conduct a business.

The informant asked the Directors as to why suddenly they were informed about the business when they were called for some job. At that time, the Directors made representation and showed some rosy picture about their business. The informant and others were lured to invest into their scheme. They were informed that they had different ranks depending on the investment made by the trainees. Depending on the rank they were to get profit. The informant was told to deposit Rs.43,000/- and it was used for lifetime including his nominee. On such payment the informant would be a distributor of their branded garments. Out of that amount Rs.9,000/- were paid to the person who had given reference of a particular trainee. According to their representation, the informant paid Rs.43,000/- in cash on 20/01/2018. He was made to sign some agreement. The informant was not allowed to read the terms of the agreement. Thereafter the first informant's friend took him to the stock room of company. The garments were priced at Rs.3,000/- to 3,500/- each. However, the informant found that the quality of garments was not good. Therefore he refused to accept those garments. However, the Directors told him that the money would not be returned and he had to take those garments. The informant stayed there for one month. However, he realized that the Directors were cheating young people and therefore he did not continue with their work. He made enquiries with the others and he came to know that even others were equally cheated. The company was conducting a pyramid system under the pretext of selling the products directly and they were not offering any job at all. On this basis, the FIR was lodged. The present Applicants are Directors of M/s Skyrunway Pvt. Ltd. according to the first informant.

4. Heard learned Counsel Mr.Sachin Pawar for the Applicants, learned Counsel Mr.Satish S. Raut for the Intervener and learned APP Ms.S.S. Kaushik for the State.

5. The learned Counsel Mr.Pawar for the Applicants submitted that the FIR against the Directors is lodged as a counter blast to the FIR lodged by the Applicant No.1 in ABA

No.317/19 against one Sagar Bhumkar. According to him, the said person Bhumkar was a political leader and he was trying to extort money from the Applicant's company. Because the Applicant's company was doing well financially. On such FIR the said person was arrested and subsequently released on bail. According to Mr.Pawar, the present FIR is lodged by the first informant at the behest of the said person Bhumkar who was exploiting young people in that area. He further submitted that the first informant and others knowingly agreed to work for the company for selling their garments. He invited my attention to the agreement. The agreement is signed by the first informant. Mr.Pawar submitted that similar agreements are signed by all the persons who are now called as victims. He further submitted that all these victims are literate and if they have knowingly participated in the marketing scheme of the company, no offence is made out.

6. As against these submissions, the learned APP as well as learned Counsel for the Intervener submitted that the

Applicants are conducting the scheme by exploiting youths in area by making representation of offering them jobs and thereby entangled them on false promise of handsome profit. They submitted that many such unemployed persons were cheated similarly. They submitted that the products given to the victims were of sub-standard quality and it was not possible to get the returns of investment made by the victims.

7. Learned APP on instructions states that there are total 30 victims as on today who have similarly invested the various amounts viz. Rs.43,000/-, Rs.8,000/-, Rs.28,000/- etc. Majority of these had invested Rs.43,000/- each. The learned Counsel for the informant submitted that though amounts of Rs.43,000/- each are taken from the victims, the invoices are given only for Rs.35,000/-. The scheme itself shows that the person who brought those trainees, was paid amount to the tune of Rs.9,000/-. She therefore submitted that the Applicants' custodial interrogation is necessary to find out the exact nature of the scheme and as to how many such victims are cheated.

8. I have considered all these submissions. Before considering the merits of the case, I must refer to the conduct of the present Applicants.

9. The learned Counsel for the Applicants had made a solemn statement before this Court on 06/06/2019 in ABA No.317/19 that the Applicants would make efforts to clear the entire dues of the victims without raising any dispute about entitlement of any of the victims. The statement was accepted and thereafter the interim protection was continued till the next date. Time and again, time was sought on that basis. The same relief on the same ground was continued in ABA No.1302/19. Unfortunately, the Applicants did not honour their commitment made before the Court. At the time of making such commitment no condition was mentioned by the Applicants. On their clear statement, the matter was kept on the next date. Their statement was accepted. All this is recorded in the order dated 06/06/2019 in ABA No.317/19, as well as in the order dated 09/07/2019 in both matters.

10. The learned APP makes a statement that the Applicants have not honoured their commitment and had sought time on some pretext. Thus, it is more than clear that the Applicants have breached the solemn undertaking given to the Court. Learned APP pointed out that on such statement on the earlier occasion also i.e. 12/02/2019, in ABA No.317/19 the Applicants had offered to return the amount of such candidates who had lodged their claim for refund of the amount. After that, on some pretext or the other, this was avoided to be done. Breach of undertaking on the part of the Applicants itself is enough to reject this application. However, I am deciding this application on merits, after taking into consideration, the submissions made by all the parties.

11. The FIR shows that the unemployed youths from rural area were lured into attending their programmes. The programmes purportedly were training programmes to impart training in respect of the work of the company. However, once

the trainees attended the programme, the trainees were not given jobs as promised. They were shown rosy picture of earning handsome profit if they invested certain amount in that company. The inducement on the part of the Directors is more than clear from the nature of offence. All that the company wanted was the investment from these persons, who were in dire need of jobs. So instead of offering them jobs, they were induced into partying with their savings. The amount taken from these candidates was not a small amount considering the weak financial position of these victims. From the FIR it is clear that till the signing of the agreement they were not even shown the products. Only after agreements were signed and the money was paid, they were taken to the stock room where the garments were shown. By that time, the victims were trapped into their scheme because their money was locked and they could not get out of that. The victims themselves cannot be blamed for entering into the agreement. The agreement is entered into only on the inducement made by the Directors. From the scheme developed by the Applicants, it is more than clear that the intention of the Applicants was dishonest. If they simply wanted to appoint distributors for selling their garments, nothing prevented them from coming out with a clear advertisement and clear direction in that behalf. Instead of that, the victims were brought to the purported training programme through mouth publicity without explaining them exact nature of business. They were given 10 to 15 pieces of sub-standard quality and they were expected to sell them. It can hardly be called 'distributorship'. It was not even clear as to how the victims were to earn profits. In addition, the witnesses were made to pay big amounts. This was noting but some investment scheme. Thus offence of cheating, misappropriation as well as criminal breach of trust are clearly made out. Apart from that, though the investigating agency has not applied the provisions of MPID; prima facie, even that Act is applicable because money taken from the victims falls within the definition of “deposit” mentioned u/s 2 (c) of the MPID Act, 1999. The victims were promised high profits in proportion of their investments. The company has carefully avoided to mention the factory from where such garments were obtained. Thus, the entire scheme appears to be a fraudulent scheme, because of which many poor people are cheated. Therefore to unearth roots of entire scheme, custodial interrogation of the Applicants is necessary. There is no merit in the applications. The applications are therefore rejected.

(SARANG V. KOTWAL, J.)